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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **FAO 174/2015**

MOHIT KUMAR

..... Appellant

Through: Mr. Chetan Sharma, Sr. Advocate with
Mr. M.K. Singh, Advocate with appellant in
person.

versus

QUALITY PRINTERS PVT LTD & ORS

..... Respondents

Through: Mr. Amit Singh Chadha, Sr. Advocate
with Mr. Kunal Sinha, Advocate for R-1 & R-2.

Mr. Sanjeev Agarwal and Mr. Ekansh Agarwal,
Advs. for R-3.

Mr. Pravesh Thakur, Advocate for R-4/Sub
Registrar (INA).

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER

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23.05.2018

C.M.No. 21814/2018 (by appellant for directions)

By detailed order dated 26.08.2015, the appeal had been dismissed for non-prosecution *inter alia*, for non-payment of sum of Rs. 1,55,000/- as directed by an earlier order dated 29.05.2015. The Court had also noted that in the order dated 29.10.2014, even the cost, which was imposed on the appellant had not been paid by him; that the petition lacked substance, and the records showed that there was an endeavour by the plaintiff to drag-on the suit to cause harassment and prejudice to the respondent.

The appeal was dismissed about 34 months ago and the appellant has now moved an application seeking to deposit an amount of Rs. 1,55,000/- so that his suit could be revived and heard. The reason for delay in filing the application is that on account of his ill health and dire financial constraints

the requisite amount could not be paid by him; that these conditions were beyond his control, more in the nature of *vis major*, therefore the delay may not be held against him and application may be allowed. He says that now he has means to comply with the order. Additionally, he is also ready to pay such other amounts as may be fixed by this Court. He submits that the petition is bona fide.

Two elements arise for consideration in this petition are:

- (i) as to whether the appellant could pay the monies as directed by the Court.
- (ii) Whether he was constrained from informing the Court of his inability to pay, or had otherwise sought extension of time on or before the dismissal of the appeal.

There is nothing on the record as to why he could not move an application for recall of the order in terms of his alleged impecunious position. During the course of the arguments, the appellant has produced his income tax returns for Financial Year 2015-16, 2016-17 and 2017-18. It shows increase in income every year. The last return shows revenue receipts of over Rs.11 lacs. His plea of penury is not made out.

The learned Senior Advocate for the appellant states that the appellant is now in a condition to pay the monies, therefore, the application may be allowed.

It need hardly be emphasised that time and tide wait for no man. Much proverbial water has flown since the matter stood adjudicated on 26.08.2015. The appellant cannot, like Rip Van Winkle, awaken after years to claim a right to be heard because he now feels financially equipped to pursue his case. As the case has since long been buried, there is no reason

for or scope of its revival.

Nothing further requires to be done. The application is without merit and accordingly it is dismissed.

NAJMI WAZIRI, J

MAY 23, 2018/_{RW}